

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**No. 1:14-cv-1025 RB/SMV**

**THE CITY OF ALBUQUERQUE,**

**Defendant,**

**v.**

**THE ALBUQUERQUE POLICE  
OFFICERS' ASSOCIATION,**

**Intervenor.**

**CITY OF ALBUQUERQUE'S MEMORANDUM PROVIDING DETAIL INTO THE USE  
OF FORCE INVESTIGATION BACKLOG PENDING REVIEW BY THE  
ALBUQUERQUE POLICE DEPARTMENT**

The City of Albuquerque submits this Memorandum in an effort to provide further explanation of the Albuquerque Police Department's (APD) effort to achieve operational compliance with aspects of the Court-Approved Settlement Agreement (CASA) related to the reporting and investigation of use of force incidents.

Specifically, this Memorandum will expand upon the City's Status Report (*See, Doc. 375*) concerning three critical issues (1) the method to determine the backlog of supervisor use of force investigations to be reviewed by the Internal Affairs—Force Division (IA-FD), (2) the number of serious use of force investigations considered part of the backlog which are pending chain of command review and presentation to the Force Review Board (FRB), and (3) the efforts

by the Field Services Bureau (FSB) Deputy Chief to avoid the accumulation of additional backlogged investigations.

## **I. Introduction**

The force reporting and investigation system employed by APD has involved a two-tiered force classification system which takes into consideration the level of force and injury to an individual.<sup>1</sup> The officer involved in any force incident is required to immediately notify his on-duty supervisor so that they may respond to the scene. (*See*, Doc. 9-1, Paragraph 41). The on-duty supervisor is then required to respond to the scene and classify the force incident as either serious, and investigated by the Internal Affairs-Force Division, or one which will be completed by the involved officer's chain of command. (*Id.* at Paragraph 50). The on-duty supervisor has seventy-two (72) hours from clearing the scene of a use of force to complete and forward their investigation to a lieutenant in the chain of command. (*Id.* at Paragraph 53). There are no deadlines for the lieutenant, commander or entire chain of command to complete supervisor use of force investigations. Once a supervisor use of force investigation is completed by the chain of command then ten percent of all such investigations are required to be presented to the Force Review Board (FRB). (*Id.* at Paragraph 57).

A serious use of force investigation by IA-FD must be completed by that chain of command within two months from learning of a serious use of force and an extension can be granted with the approval of the commanding officer in IA-FD through consultation with the Chief of Police. (*Id.* at Paragraph 71). A serious use of force investigation is completed by a

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<sup>1</sup> The reader should take note that the Court recently approved amendments to the CASA and the force reporting and investigation system. As part of these changes APD will move from a two-tiered approach to reporting and investigating force to a three-tiered approach which takes into consideration use of force and the likelihood of injury or complaint of injury along with the appropriate review or investigative response. (*See* Doc. 354-1, Paragraph 48).

sergeant and reviewed by the lieutenant and commander of IA-FD and every one of these investigations is required to be presented to the FRB. (*Id.* at Paragraph 78).

#### **A. The Backlog: Supervisor Use of Force Investigations**

In preparing his reports to the Court and community the Independent Monitor requests data from APD. As part of these requests he asks for ledgers of supervisor use of force investigations that have been initiated during a particular six-month time frame. In May 2017 the Independent Monitor submitted such a request to APD and learned for the first time that the responsive ledgers only contained supervisor use of force investigations that had been completed, rather than all investigations that had occurred during the specified time frame. (*See*, Doc. 313, at 24).

This request by the Independent Monitor and response by APD marked the first mention of a “backlog” of supervisor use of force investigations which had accumulated in the Department’s force reporting and investigation system. APD accumulated the entire list of these backlogged investigations and sent them in a response to the Independent Monitor in September 2017. This list designated the number of supervisor use of force investigations pending review by the chain of command dating back to January 2017.

The original listing provided to the Independent Monitor in September 2017 included one hundred and fifty supervisor use of force investigations.<sup>2</sup> This list of delayed investigations was captured as the initial list of investigations to be reviewed by IA-FD. Because the number of use of force incidents is not static, and given the fact that the work to review these investigations was going to begin some months after the initial backlog list was created, APD began to look forward from September 2017 in the force administrative system to capture any case that was one

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<sup>2</sup> For purposes of this aspect of the Memorandum “supervisor use of force investigation” involves use of force and show of force investigations.

hundred and twenty days or older. This approach assured that every supervisor use of force investigation that had been pending more than one hundred and twenty days from September 2017 moving forward to May 7, 2017 would be subject to review by IA-FD.

**Based upon this approach the total number of backlogged supervisor use of force investigations that have been found to be one-hundred and twenty days or older beginning September 2017 moving forward to May 7, 2018 is three hundred and fourteen (314).**

#### **B. The Backlog: Serious Use of Force Investigations**

The FRB has not convened for several months. As a result, there are serious use of force investigations that have been completed by the IA-FD chain of command which are pending FRB presentation. Importantly, these investigations will be subject to the same review process as developed for the backlogged supervisor use of force investigations. This means that a reviewer will look at the investigation, completed by the chain of command, to determine the sufficiency of the original investigation. Once a review has been completed then the investigation will be presented to FRB. **The total number of serious use of force investigations that have been completed by the chain of command which are to be presented to FRB is twenty-six (26).**

In addition to these cases there are thirty-two (32) cases being investigated by an officer in IA-FD and thirty-one (31) pending a lieutenant and commander's review. IA-FD personnel are being trained in the appropriate standard to review these use of force incidents and once they are completed they will be presented to the FRB. **The total number of serious use of force investigations that are pending completion by the chain of command is sixty-two (63).**

#### **C. Addressing New Investigations by the FSB**

The initial backlog of supervisor use of force investigations accrued due to lack of

oversight and timelines for the chain of command to complete their reviews. In response to this issue the Deputy Chief of Field Services promulgated Special Order 18-58 (*See Doc. 375-2*) which establishes individual deadlines for on-duty supervisors, lieutenants and commanders to complete their aspect of a particular investigation. The expectation is that supervisor use of force investigations take no longer than sixty-five (65) days from initiation by an on-duty supervisor to completion of a commander's review.

The Deputy Chief is also receiving regular reports which detail factors such as the age of supervisor use of force investigations and the number of investigations held by individuals in a chain of command. Where bottlenecks or delays are noted by the Deputy Chief he addresses the involved personnel directly with an expectation of swift remedial action.

**As of June 19, 2018 the following represents the number of show of force and use of force investigations pending in the FSB chain of command:**

- **Eighty-nine (89) use of force cases pending sixty days or less;**
- **Ten (10) show of force cases pending sixty days or less;**
- **Forty-two (42) use of force cases pending more than sixty days; and**
- **Three (3) show of force cases pending more than sixty days.**

### **Conclusion**

The City and APD remain committed to informing the Court about the ongoing effort to resolve the use of force investigation backlog and hopes that this brief Memorandum has provided sufficient detail about how the number of backlogged use of force investigations, subject to review by IA-FD, has been derived and the plan set in place to assure that supervisor use of force investigations by FSB are completed in a timely manner.

The City will next be filing its second Status Report on August 31, 2018 to update the Court and community on the efforts to implement the deliverables set forth in its Compliance Plan.

Respectfully submitted,

**CITY OF ALBUQUERQUE**  
**Esteban A. Aguilar, Jr., City Attorney**

Electronically Filed

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20<sup>th</sup> day of June, 2018, I filed the *foregoing pleading* electronically through the CM/ECF system, which caused the parties, counsel of record and independent monitor on the service list to be served by electronic means.

/s/ Jeramy I. Schmehl